

1 **(March 13, 1995)**

2 **Relations With Railroad**

3 Railroad Company, as used in the following specifications, shall be the railroad  
4 company or companies, or railway company or companies specified in these  
5 Special Provisions. The following provisions, though referring to a single Railroad  
6 Company, shall be applicable to each of the following railroad companies or  
7 railway companies:

8  
9 \$\$1\$\$

10  
11 **Protection of Railroad Property**

12 For the protection of the property and to ensure the safe operation of trains of  
13 the Railroad Company and of other companies lawfully using the track or  
14 occupying the right of way of said company, the following terms, together  
15 with the other provisions of this Contract, will govern and be binding:

16  
17 The Contractor shall exercise care in all operations and shall, at the  
18 Contractor's expense, adequately protect the property of the Railroad  
19 Company and its appurtenances, property in its custody, or persons  
20 lawfully upon its right of way, from damage, destruction, interference or  
21 injury and shall prosecute the work to not interfere with the Railroad  
22 Company or its appurtenances, or any of the Railroad Company's trains  
23 or facilities, and shall complete the work to a condition that shall not  
24 interfere with or menace the integrity or safe and successful operations  
25 of the Railroad Company or its appurtenances, or any of the Railroad  
26 Company's trains or facilities.

27  
28 The Contractor shall not transport equipment, machinery, or materials  
29 across the Railroad Company's tracks, except at a public crossing,  
30 without the written consent of the Railroad Company.

31  
32 The Contractor shall keep the ditches of the Railroad Company open  
33 and clean from any deposits, and keep the right of way clean from  
34 debris, and shall clean and restore ballast of the Railroad Company  
35 which is disturbed or becomes fouled with dirt or materials when such  
36 deposits or damage result from the operations of the Contractor, except  
37 as provided elsewhere.

38  
39 The Contractor's work shall be conducted in such a manner that there  
40 will be a minimum of interference with the operation of railroad traffic.  
41 The Railroad Company will specify what periods will be allowed the  
42 Contractor for executing any part of the work in which the Railroad  
43 Company's tracks will be obstructed or made unsafe for operation of  
44 railroad traffic.

45  
46 With respect to the Contractor's operations, in carrying out the work, the  
47 Contractor shall employ such security personnel as may be necessary to  
48 prevent obstruction of the railroad track and interference with train  
49 movements. Such security personnel shall cooperate with the Railroad  
50 Company's flaggers or employees to ensure the safety of train  
51 movements.

52  
53 In the event that an emergency occurs in connection with the work  
54 specified, the Railroad Company reserves the right to do any and all  
55 work that may be necessary to maintain railroad traffic. If the emergency  
56 is caused by the Contractor, the Contractor shall pay the Railroad  
57 Company for the cost of such emergency work and said costs shall be in

1 addition to the \$5,000 maximum limit stated under Contractor's Cost  
2 Obligations.

3  
4 When, in the opinion of the Railroad Company, the services of flaggers  
5 or security personnel are necessary for the protection of the Railroad  
6 Company's facilities by reason of the Contractor's operations, the  
7 Railroad Company will furnish such flaggers or security personnel as  
8 may be required and the Railroad Company will be reimbursed for the  
9 cost of flaggers or security personnel as specified under Contractor's  
10 Cost Obligations. The Contractor shall notify the Railroad Company a  
11 minimum of 48 hours in advance of whenever the Contractor is about to  
12 perform work adjacent to the tracks to enable the Railroad Company to  
13 provide flagging or other protective service.

14  
15 No act of the Railroad Company in supervising or approving any work  
16 shall reduce or in any way affect the liability of the Contractor for  
17 damages, expense, or cost which may result to the Railroad Company  
18 from the construction of this Contract.

19  
20 Protective services, including railroad flagging and other devices, may be  
21 required by the Railroad Company as a result of the Contractor's operations  
22 to protect the Railroad Company's facilities, property, and movement of its  
23 trains or engines.

24  
25 In addition to flagging, other protective devices, such as crossing signals,  
26 indicators, telltales, lights, telephones, etc. may be required. Telltales may  
27 be required by the Railroad Company for any proposed restrictions of vertical  
28 clearances to less than 22.5 feet. The Railroad Company will install the  
29 telltales.

30  
31 The nature and extent of protective services, personnel and other measures  
32 required will in all cases be determined by the Railroad Company. Nothing in  
33 these specifications will limit, in any way the Railroad Company's right to  
34 determine and assign the number of personnel, the classes of personnel for  
35 protective services, nor other protective measures it deems necessary.

36  
37 Unless otherwise provided, all personnel assigned by the Railroad Company,  
38 other than those engaged in performing work by the Railroad Company as  
39 listed under Construction Work by Railroad Company, will be considered  
40 protective personnel.

41  
42 In general, the Railroad Company will furnish protective services:

- 43  
44 a. For any excavation below elevation of track subgrade, if in the  
45 opinion of the Railroad Company's representative, track or other  
46 railroad facilities may be subject to settlement or movement.

47  
48 For all work over or adjacent to the track, if, in the opinion of the  
49 Railroad Company's representative, said work represents a hazard  
50 to the Railroad Company.

- 51  
52 b. During any clearing, grubbing, grading, or blasting in proximity to  
53 the facilities, which in the opinion of the Railroad Company's  
54 representative may endanger or interfere with railroad facilities or  
55 operations.

- 56  
57 c. When any of the Contractor's operations are carried on, within or  
58 near railroad right of way and in the opinion of the Railroad

Company's representative, could endanger railroad facilities or create a hazard to railroad operations. Communications Linemen or Signalmen may be used to protect communications and signal facilities, if deemed necessary by the Railroad Company.

### **Contractor's Cost Obligations**

Costs incurred by the Railroad Company for providing protective services shall be at the sole expense of the Contractor up to a maximum amount of \$5,000 for this project. All costs for providing protective services in excess of \$5,000 will be paid by the Contracting Agency.

The Contractor shall make an estimate of the actual protective services the Railroad Company will require based on the Contractor's construction schedule, methods and operations, and these costs shall be included in the pertinent pay items of work involved in this Contract. The Contractor shall have no claim against the Contracting Agency for charges to the Contractor for costs of Railroad protective services and devices within the above specified maximum limit.

Billings against the Contracting Agency and charges against the Contractor for protective services will be based on the rates of pay in effect at the time of the work for Railroad Company employees and various classes of labor actually used on the work for protection of the Railroad Company and to which shall be added labor additives, travel, and other costs incurred by the Railroad Company in connection with such service.

The Contracting Agency will reimburse the Railroad Company directly for all costs incurred by the Railroad Company for protective services and devices, and said costs will be deducted from progress or final payments made to the Contractor within the above specified maximum limit.

Upon physical completion of the Contract, the Contracting Agency will deduct a maximum of \$5,000 to cover unbilled protective services costs, and will retain this amount for a period of 150 calendar days after the physical completion date. After the 150-day period, the Contracting Agency will refund to the Contractor the balance of any remaining retained funds. If there are insufficient funds because of additional work performed by the Railroad Company at the Contractor's request, as described below in Construction Work by Railroad Company, the Contractor will be billed for the additional costs charged by the Railroad Company.

The amount retained to cover such incurred costs by the Railroad Company is in addition to funds reserved from the Contractor's pay estimates for labor and material liens as provided by RCW 60.28.010.

### **Estimating Railroad Protective Services**

A full flagging crew generally consists of three people. Under certain conditions, more than three people may be required or a lesser number may be sufficient. A normal shift is eight hours and the normal overtime rate is one and one-half times the base rate.

Generally, a Sectionman's hourly rate is \$13.50, additives are 55 to 117 percent, and travel per employee is \$19.00 per day. These rates are provided solely for informational purposes and there is no guarantee that these classes of labor or rates will be in effect at the time the work is undertaken.

Additives are a percent of direct labor costs and normally include: vacation allowances, paid holidays, health and welfare, railroad retirement and unemployment taxes, public liability, property damage and workmen's compensation insurance, and accounting and billing.

Additional information can be obtained by contacting the Railroad's Roadmaster:

\$\$2\$\$

(Name, Address & Phone Number)

### **Construction Work by Railroad Company**

The work by the Railroad Company as described below will be performed by the Railroad Company with its own forces at no cost to the Contractor:

\$\$3\$\$

All work which is performed by the Railroad Company at the Contractor's request and which is for the Contractor's benefit or convenience shall be at the Contractor's expense and the Contractor shall reimburse the Railroad Company for all costs for such work. The cost for this work shall be in addition to the \$5,000 maximum limit stated under Contractor's Cost Obligations.

The Contractor shall cooperate with the Railroad Company and so conduct operations that the necessary reconstruction of its facilities and the removal of existing facilities can be accomplished without interruption of service.

The operation of the Railroad Company in the reconstruction and removal of its facilities shall not be reason for a claim by the Contractor.

### **Railroad Protective Liability Insurance**

The Contractor shall protect the Railroad Company and any other railroad company occupying or using the Railroad Company's rights of way or lines of railroad against all loss and damages arising from activities of the Contractor or the Contractor's forces or any of the Contractor's subcontractors or agents.

The Contractor shall furnish for each Railroad Company the original and three certified copies of a Railroad Protective Liability Insurance Policy, naming the Railroad Company as the insured and providing for protection to the Railroad Company in the manner and form described in the Railroad Protective Liability Form as set forth below.

Said insurance shall be executed by a corporation qualified to write insurance in the State of Washington in form and substance satisfactory to the Railroad Company and shall be delivered to the Engineer. The Engineer will submit the insurance to the Railroad Company for its approval. The Contractor shall not enter upon or use the Railroad Company's property until notified by the Engineer of the Railroad Company's approval. The various blank sections of the Railroad Protective Liability Form (one form for each Railroad Company involved), a sample of which is contained in these Special Provisions, shall be completed in the following manner:

Item 1:

\$\$4\$\$

Item 3:

1  
2 The combined single limit of the insurance company's liability under  
3 this policy to the insured shall be not less than \$2,000,000 for all  
4 damages arising out of bodily injuries to or death of any person or  
5 persons and for all damages arising out of loss or destruction of or  
6 injury or damage to property in any one occurrence and \$6,000,000  
7 aggregate during the policy period. Said insurance policy executed  
8 by a corporation qualified to write the same in the State of  
9 Washington, shall be in form and substance satisfactory to the  
10 Railroad Company and shall be delivered to and approved by the  
11 Railroad Company prior to the entry upon or use of its property by  
12 the Contractor.

13  
14 This limit shall be inserted in the appropriate blank(s).

15  
16 Item 6:

17  
18 All work and operations involved in, relating, pertaining or incidental  
19 to the improvement of \*\*\* \$\$5\$\$ \*\*\* under contract number (enter  
20 number), between the parties designated under items 4 and 5, by  
21 \*\*\* \$\$6\$\$.

22  
23 All other blanks are self-explanatory.

24  
25 All insurance specified above shall be carried until the physical completion  
26 date of the contract as described in Section 1-08.5 except as stated herein.

27  
28 When all the work involving construction activities within or immediately  
29 adjacent to the railroad right of way is completed, the Contractor may make a  
30 written request to the Engineer to be relieved of the responsibility to continue  
31 all or part of the insurance specified above. If the Engineer deems the  
32 portion of the work in that area is complete, the Engineer may approve the  
33 Contractor's request. However, if for any reason the Contractor resumes or  
34 starts any new work in that area (including being ordered to do so by the  
35 Engineer), the insurance shall be reinstated by the Contractor before the  
36 work is started. If the insurance must be reinstated because of negligence or  
37 acts by the Contractor or failure of the Contractor to perform all the contract  
38 requirements, the costs shall be the responsibility of the Contractor. If the  
39 insurance must be reinstated because of changes to the contract, the costs  
40 will be considered in accordance with Section 1-04.4.

41  
42 **Contractor's Public Liability and Property Damage Insurance**

43 The minimum coverage required during any period the Contractor enters  
44 upon Railroad property shall be as follows:

45  
46 The limits of the insurance company's liability under this policy to the  
47 insured shall be not less than \$1,000,000 for all damages arising out of  
48 bodily injuries to or death of one person, and, subject to that limit for  
49 each person, a total of \$2,000,000 for all damages arising out of bodily  
50 injuries to or death of two or more persons in any one accident and not  
51 less than \$1,000,000 for all damages to or destruction of property in any  
52 one accident, and subject to that limit for any one accident, a total limit of  
53 \$2,000,000 for all damages to or destruction of property during the policy  
54 period.

55  
56 A certificate of insurance providing proof of said Contractor's Public Liability  
57 and Property Damage Insurance, executed by a corporation qualified to write  
58 the same in the State of Washington, in form and substance satisfactory to

1 the Railroad Company, shall be delivered to and approved by the Railroad  
2 Company prior to the entry upon or use of the Railroad Company's property  
3 by the Contractor.